



General Assembly

January Session, 2007

Raised Bill No. 7294

LCO No. 4993

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Referred to Committee on Commerce

Introduced by:
(CE)

***AN ACT CONCERNING THE CONNECTICUT DIGITAL MEDIA AND
MOTION PICTURE INDUSTRY.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 12-217jj of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2007, and*
3 *applicable to income years commencing on or after January 1, 2007*):

4 (a) As used in this section:

5 (1) "Commissioner" means the Commissioner of Revenue Services.

6 (2) "Commission" means the Connecticut Commission on Culture
7 and Tourism.

8 (3) "Qualified production" means the process of producing any type
9 of entertainment content which shall include motion pictures;
10 documentaries; long-form, specials, mini-series, series, music videos
11 and interstitials television programming; interactive television;
12 interactive games; videogames; commercials; infomercials; any format
13 of digital media created primarily for distribution or exhibition to the
14 general public; and any trailer, pilot, video teaser or demo created

15 primarily to stimulate the sale, marketing, promotion or exploitation of
16 future investment in either a product or a qualified production via any
17 means and media in any digital media format, film or videotape,
18 provided such program meets all the underlying criteria of a qualified
19 production. "Qualified production" shall not include (A) any ongoing
20 program created primarily as news, weather or financial market
21 reports, or (B) any production containing any material or performance
22 that is obscene, as defined in section 53a-193.

23 (4) "Eligible production company" means a corporation, partnership,
24 limited liability company, or other business entity engaged in the
25 business of producing qualified productions on a one-time or ongoing
26 basis, and qualified by the Secretary of the State to engage in business
27 in the state.

28 (5) "Production expenses or costs" means all expenditures clearly
29 and demonstrably incurred in the state in the development,
30 preproduction, production or postproduction costs of a qualified
31 production, including:

32 (A) Expenditures for optioning or purchase of any intellectual
33 property including, but not limited to, books, scripts, music or
34 trademarks relating to the development or purchase of a script,
35 screenplay or format, provided (i) the intellectual property was
36 produced primarily in the state, (ii) seventy-five per cent of the
37 qualified production based on such intellectual property is produced
38 in the state, and (iii) the production expenses or costs for such
39 optioning or purchase are less than thirty-five per cent of the
40 production expenses or costs incurred in the state. Such expenses or
41 costs shall include all expenditures generally associated with the
42 optioning or purchase of intellectual property, including option
43 money, agent fees and attorney fees relating to the transaction, but
44 shall not include any and all deferrals, deferments, royalties, profit
45 participation or recourse or nonrecourse loans which the eligible
46 production company may negotiate in order to obtain the rights to the

47 intellectual property;

48 (B) Expenditures incurred in the state in the form of either
49 compensation or purchases including production work, production
50 equipment, production software, postproduction work,
51 postproduction equipment, postproduction software, set design, set
52 construction, props, lighting, wardrobe, makeup, makeup accessories,
53 special effects, visual effects, audio effects, film processing, music,
54 sound mixing, editing, location fees, soundstages and any and all other
55 costs or services directly incurred in the state in connection with a
56 state-certified qualified production; such costs or services shall include
57 insurance, insurance loss and damage payments, completion bond,
58 production financing expenses, all travel required for persons working
59 in the state, employee fringe benefits, and publicity work that occurs in
60 the state in connection with a state-certified qualified production;

61 (C) Expenditures for distribution, including preproduction,
62 production or postproduction costs relating to the creation of trailers,
63 marketing videos, commercials, point-of-purchase videos and any and
64 all content created on film or digital media, including the duplication
65 of films, videos, CDs, DVDs and any and all digital files now in
66 existence and those yet to be created for mass consumer consumption;
67 the purchase, by a company in the state, of any and all equipment
68 relating to the duplication or mass market distribution of any content
69 created or produced in the state by any digital media format which is
70 now in use and those formats yet to be created for mass consumer
71 consumption; and

72 (D) "Production expenses or costs" does not include the following:
73 [(i) Talent fees for extras, principal day players and atmosphere, as
74 defined by the Screen Actors Guild, to the extent the individual
75 performer costs exceed the rates of the Screen Actors Guild for double
76 scale wages under the current collective bargaining agreements; (ii)
77 media] (i) Media buys, promotional events or gifts or public relations
78 associated with the promotion or marketing of any qualified

79 production; [(iii)] (ii) deferred, leveraged or profit participation costs
 80 relating to any and all personnel associated with any and all aspects of
 81 the production, including, but not limited to, producer fees, director
 82 fees, talent fees and writer fees; [(iv)] (iii) costs relating to the transfer
 83 of the production tax credits; and [(v)] (iv) any amounts paid to
 84 persons or businesses as a result of their participation in profits from
 85 the exploitation of the qualified production.

86 (6) "State-certified qualified production" means a qualified
 87 production produced by an eligible production company that (A) is in
 88 compliance with regulations adopted pursuant to subsection [(e)] (f) of
 89 this section, (B) is authorized to conduct business in this state, and (C)
 90 has been approved by the commission as qualifying for a production
 91 tax credit under this section.

92 (7) "State-certified digital media and motion picture fund" or "fund"
 93 means any fund devoted exclusively to Connecticut-based qualified
 94 productions that (A) are certified by the commission and the
 95 commissioner, (B) are authorized to conduct business in this state, and
 96 (C) have their primary place of business in this state.

97 (b) (1) The Connecticut Commission on Culture and Tourism shall
 98 administer a system of tax credit vouchers within the resources,
 99 requirements and purposes of this section for eligible production
 100 companies producing a state-certified qualified production in the state,
 101 and for taxpayers making contributions to a state-certified digital
 102 media and motion picture fund, as provided in subsection (e) of this
 103 section. For income years commencing on or after January 1, 2006, any
 104 eligible production company incurring production expenses or costs in
 105 excess of two hundred fifty thousand dollars shall be eligible for a
 106 credit against the tax imposed under [this chapter] chapters 207 to 212,
 107 inclusive, equal to thirty per cent of such production expenses or costs.
 108 In the case of a qualified production involving the production of a
 109 series, collection or multiple episodes of related entertainment content,
 110 the production expenses or costs of the entire series, collection or

111 multiple episodes of related entertainment content shall be taken into
112 account in determining whether such production meets the two
113 hundred fifty thousand dollar eligibility threshold.

114 (2) Any credit allowed pursuant to this subsection may be sold,
115 assigned or otherwise transferred, in whole or in part, to one or more
116 taxpayers, [provided such taxpayers and such taxpayers may sell,
117 assign or otherwise transfer, in whole or in part, such credit. may claim
118 such credit only for an income year in which the eligible production
119 company would have been eligible to claim such credit].

120 (3) Any such credit allowed under this subsection shall be claimed
121 against the tax imposed under [this chapter] chapters 207 to 212,
122 inclusive, for the income year in which [final certification for the state-
123 certified qualified production is made by the commission pursuant to
124 this section] the production expenses or costs were incurred and for
125 which a tax credit voucher was issued pursuant to subsection (c) of
126 this section, and may be carried forward for the three immediately
127 succeeding income years. Any production tax credit allowed under
128 this subsection shall be nonrefundable.

129 (4) In any instance where an eligible production company receives
130 funding from a state-certified digital media and motion picture fund,
131 the tax credit applicable to such funds shall be allocated directly to the
132 fund, and not to the eligible production company.

133 (c) (1) An eligible production company shall apply to the
134 commission for [an eligibility certificate] a tax credit voucher not later
135 than ninety days after the first production expenses or costs are
136 incurred in the production of a qualified production, and shall provide
137 with such application such information as the commission may require
138 to determine such company's eligibility to claim a credit under this
139 section.

140 (2) Not earlier than three months after the application in subdivision
141 (1) of this subsection, an eligible production company may apply to the

142 commission for a production tax credit voucher, and shall provide
143 with such application such information as the commission may require
144 pertaining to the amount of such company's production expenses or
145 costs to date. If the commission determines that such company is
146 eligible to be issued a production tax credit voucher, the commission
147 shall enter on the voucher the amount of production expenses or costs
148 that has been established to the satisfaction of the commission, and the
149 amount of such company's credit under this section. The commission
150 shall provide a copy of such voucher to the commissioner, upon
151 request.

152 ~~[(2)]~~ (3) Not later than ninety days after the last production expenses
153 or costs are incurred in the production of a qualified production, an
154 eligible production company shall apply to the commission for a
155 production tax credit [certificate] voucher, and shall provide with such
156 application such information as the commission may require
157 pertaining to the amount of [the] such company's production expenses
158 or costs. If the commission determines that [the] such company is
159 eligible to be issued a production tax credit [certificate] voucher, the
160 commission shall enter on the [certificate] voucher the amount of
161 production expenses or costs that has been established to the
162 satisfaction of the commission, minus the amount of any credit issued
163 pursuant to subdivision (2) of this subsection, and the amount of [the]
164 such company's credit under this section. The commission shall
165 provide a copy of such [certificate] voucher to the commissioner, upon
166 request.

167 (d) If an eligible production company sells, assigns or otherwise
168 transfers a credit under this section to another taxpayer, the transferor
169 and transferee shall jointly submit written notification of such transfer
170 to the commission not later than thirty days after such transfer. If such
171 transferee sells, assigns or otherwise transfers a credit under this
172 section to a subsequent transferee, such transferee and such
173 subsequent transferee shall jointly submit written notification of such
174 transfer to the commission not later than thirty days after such

175 transfer. The notification after each transfer shall include the credit
176 [certificate] voucher number, the date of transfer, the amount of such
177 credit transferred, the tax credit balance before and after the transfer,
178 the tax identification numbers for both the transferor and the
179 transferee, and any other information required by the commission.
180 Failure to comply with this subsection will result in a disallowance of
181 the tax credit until there is full compliance on [both] the part of the
182 transferor and the transferee, and for a second transfer on the part of
183 the transferee and the subsequent transferee. The commission shall
184 provide a copy of the notification of assignment to the commissioner
185 upon request.

186 (e) (1) The manager of a digital media and motion picture fund may
187 apply to the commission to be certified, and shall provide any
188 information requested by the commission to assess such fund's
189 financial responsibility, professional competence and experience in
190 managing investment funds. Failure to maintain adequate fiduciary
191 standards with respect to investments made pursuant to this
192 subsection shall be cause for the commission to revoke any certification
193 granted under this subsection. A fund may appeal such revocation as
194 provided in chapter 54.

195 (2) The commission shall administer a system of tax credit vouchers
196 for any taxpayer making a contribution to a state-certified digital
197 media and motion picture fund. For income or taxable years
198 commencing on or after January 1, 2007, a taxpayer making such
199 contribution shall be eligible for a credit against the tax imposed under
200 chapters 207 to 212, in an amount equal to thirty per cent of the
201 amount certified for credit by the commission. Any credit allowed
202 under this subsection shall be claimed for the income or taxable year in
203 which the tax credit voucher is issued, and may be carried forward for
204 the three immediately succeeding income years.

205 (3) Any taxpayer seeking a credit under this subsection shall apply
206 to the commission for a tax credit voucher. The taxpayer shall include

207 the name of the state-certified digital media and motion picture fund,
208 the amount of the contribution and any further information required
209 by the commission. The manager of such fund shall provide to the
210 commission written certification of the amount of the contribution at
211 the time of such contribution.

212 (4) (A) The commission is not liable, and the fund need not provide
213 a refund of a contributed amount, if a taxpayer who has received a tax
214 credit voucher is unable to use all or a portion of the tax credit to offset
215 the tax liability of such taxpayer.

216 (B) To the extent the commission does not certify contributed
217 amounts as eligible for a tax credit voucher, the taxpayer may request
218 a refund of the amount the taxpayer contributed, and the fund
219 manager shall refund that amount, and so notify the commission.

220 (5) A taxpayer who has received a tax credit voucher pursuant to
221 this subsection may sell, assign or otherwise transfer a credit under
222 this subsection to another taxpayer, provided the transferor and
223 transferee shall jointly submit written notification of such transfer to
224 the commission not later than thirty days after such transfer, or on or
225 before the date on which the income or corporate tax return of the
226 transferee for the first year in which the credit may be claimed is filed
227 or due, whichever is earlier. The notification shall include the voucher
228 number, the date of transfer, the amount of such credit transferred, the
229 tax credit balance before and after the transfer, the tax identification
230 numbers for both the transferor and the transferee, and any other
231 information required by the commission. Failure to comply with this
232 subdivision will result in a disallowance of the tax credit until there is
233 full compliance on both the part of the transferor and the transferee.
234 The commission shall provide a copy of the notification of assignment
235 to the commissioner upon request.

236 (6) (A) If a tax credit is claimed under this subsection by a
237 nonresident or part-year resident taxpayer, the amount shall not be
238 subject to proration pursuant to section 12-700.

239 (B) If the amount of contribution for which a tax credit voucher is
 240 issued is allowed as a deduction for federal tax purposes, the amount
 241 of the contribution shall be added to federal taxable income for
 242 Connecticut tax purposes.

243 [(e)] (f) The commission, in consultation with the commissioner,
 244 shall adopt regulations, in accordance with the provisions of chapter
 245 54, as may be necessary for the administration of this section.

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| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>July 1, 2007, and applicable to income years commencing on or after January 1, 2007</i> | 12-217jj |

Statement of Purpose:

To amend the state's film production tax credit by (1) adding a tax credit for contributions to a digital media and motion picture fund, (2) further clarifying the definition of "production expenses or costs", (3) increasing the eligible production expenses or costs from \$50,000 to \$250,000, (4) allowing credits not only against the corporation tax, but against other business taxes and the personal income tax, (5) including provision for figuring production costs for a series, (6) clarifying the transferability of the credits, and (7) making other clarifying changes.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]